

**Sherry and O'Leary, Inc. and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 27, AFL-CIO.** Case 6-CA-23069

July 13, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On January 2, 1992, Administrative Law Judge Hubert E. Lott issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Sherry and O'Leary, Inc., Monroeville, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

<sup>1</sup> We note that the Union's business manager's name is Andrew Hovanec.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) of the Act by refusing to supply certain information requested by the Union, we note that the information requested is contained in G.C. Exh. 6, which is a September 10, 1990 letter from the Union to the Respondent. The Respondent's exceptions allege generally that the information requested is proprietary and confidential but the exceptions do not specifically particularize or address any of the items requested in the letter. To the extent that the requested information pertains to the Respondent's relationship with Ryco, we find no merit in the exceptions.

**APPENDIX**

**NOTICE TO EMPLOYEES**  
**POSTED BY ORDER OF THE**  
**NATIONAL LABOR RELATIONS BOARD**  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to furnish information requested by the Union in its September 10, 1990 letter to us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the information requested in the Union's letter to us dated September 10, 1990.

SHERRY AND O'LEARY, INC.

*Clifford E. Spungen, Esq.*, for the General Counsel.  
*Robert J. Blumling, Esq. (Sable, Makoroff, Sherman & Gusky)*, of Pittsburgh, Pennsylvania, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

HUBERT E. LOTT, Administrative Law Judge. This case was tried in Pittsburgh, Pennsylvania, on June 5, 1991. The charge was filed on October 11, 1990, and the complaint was issued December 28, 1990.<sup>1</sup>

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent is a Pennsylvania corporation with an office and place of business in Monroeville, Pennsylvania, where it is engaged as a contractor in the construction business. During the 12-month period ending September 30, the Respondent, in the course and conduct of its business operations, purchased and received at its Monroeville, Pennsylvania facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. The Company admits, and I find, that it is an employer engaging in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent further admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The Union (Local 27) is the exclusive bargaining representative of the Respondent's plumbers, pipefitters, and apprentices as described in the collective-bargaining agreement between the Mechanical Contractors Association of Western Pennsylvania, Inc. and the Union. The Respondent is a member of the Association and a party to the most recent agreement effective from June 1, 1988, to May 31, 1991. The Respondent's owners are Thomas F. Sherry Jr. and Richard Bosco.

In August, the Union's business manager, Andrew Hovanec, received reports from the Respondent's employee/members that the Respondent might be performing contracting work under the name Ryco. At a regularly scheduled union meeting in August, employees were questioning Hovanec on whether their tools used in the post office job were being transferred to Ryco.

<sup>1</sup> All dates are in 1990 unless otherwise indicated.

Sometime after the union meeting, one of the Respondent's employees told Havanec that he received ladders on his job that were marked Ryco.

After receipt of this information, Havanec began an investigation into the relationship between the Respondent and Ryco. He contacted the Alleghany County Health Department and was informed that Thomas Sherry Jr. had filed for plumbing installation permits on behalf of Ryco. The work to be performed was identical to that performed by the Respondent's employees. Later in August, he contacted the Pennsylvania Corporation Bureau. He learned from this inquiry that the Ryco corporation was located in western Pennsylvania and that its principal officer was Thomas Sherry Jr. Ryco's secretary-treasurer was Susan Sherry and its address was Darrell Drive which turned out to be the address of Thomas Sherry Sr.

In June 1991, Richard Bosco was listed as chief executive officer and Thomas Sherry Jr. was vice president of Ryco.

In August, Havanec had occasion to talk to Bosco at a joint apprenticeship program meeting. Both are trustees of this program. He asked Bosco about Ryco and was told by Bosco that he had nothing to do with Ryco.

Havanec next searched through the Dodge Reports, which is an industry publication subscribed to by the Union. Basically the reports published the successful bidders on construction projects. He discovered that the reports listed Ryco as the successful plumbing bidder for a construction project at the Mt. Ararat Baptist Church. He noted that the address and telephone number for Ryco was the same as that for the Respondent. In September, Havanec and Union Business Agent Robert Fleishel went to the Mt. Ararat jobsite and talked to Dembrowski, the plumber on the job. Dembrowski informed them that he was employed by Ryco and Richard Bosco was his supervisor.

Following his investigation, Havanec contacted his union attorney, Ernest Orsatti, and explained what he had discovered. Both were concerned that the Respondent might be in violation of certain contract provisions, namely, article 23 which forbids subcontracting work, article 21 which sets forth work rules governing the installation of plumbing, and article 7, the work jurisdiction provision, which lists the type of work to be performed by union employees. After discussing the matter, Orsatti drew up a list of questions requiring information relating to Ryco and the Respondent and sent it in a letter to the Respondent dated September 10. The Union, to date, had never received any of the information requested from the Respondent.

Ernest Orsatti testified that the questions formulated by him were designed to elicit information on whether or not the Respondent and Ryco are a single employer. The questions relate to the issues of common ownership, common management, centralized control of labor relations, and integration of operations.

### III. ANALYSIS AND CONCLUSIONS

I find that the Union demonstrated a reasonable basis for requesting the information from the Respondent. The investigation conducted by Havanec pointed to possible violations of the collective-bargaining agreement. The only way the Union could properly administer the contract and resolve the questions raised by the investigation was through information supplied by the Respondent.

The information requested in the September letter is relevant and necessary in resolving a single employer, alter ego issue and is essential for the proper administration of the contract. *Westmoreland Coal Co.*, 304 NLRB 528 (1991).

The Respondent argued on the record that the Union never explained why it needed the information. The Respondent further argued that the request was merely harassment and overbroad. In brief, the Respondent contends that all the testimony supporting the Union's need for the information is hearsay and should not be considered.

I find that in the Union's request of September 10 it adequately explained its need for the requested information. Furthermore, in a followup letter to the Respondent dated September 25, it further explained why the information was necessary. The harassment argument is frivolous.

With respect to the hearsay argument, evidence was not offered to prove that the Respondent violated the contract or that the Respondent and Ryco are a single employer. The hearsay evidence was offered to support the Union's reasonable belief that information pertaining to the above issues should be requested from the Respondent in order to resolve those issues one way or the other. Moreover, although much of the evidence presented was hearsay, I considered it trustworthy and reliable in resolving the issue of whether or not the Union's request was reasonable. Furthermore, the reliability of the admitted evidence was corroborated by documentary evidence which was not hearsay. The Dodge Reports, which is a publication subscribed to by the Union and received in the normal course of business, clearly shows that Ryco was the successful bidder for plumbing work normally done by the Respondent. This report also gave Ryco's address and telephone number which were identical to those of the Respondent. I also considered the fact that the Respondent called no witnesses. Therefore, none of the hearsay testimony was refuted.

For the above reasons, I considered all the evidence submitted to support the Union's reasonable belief that it needed the requested information from the Respondent to administer the collective-bargaining agreement. Accordingly, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the information requested in the Union's letter dated September 10.

### CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 27, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to furnish the information requested by the Union in its September 10 letter.
4. The requested information is relevant and necessary for the Union to monitor compliance with the collective-bargaining agreement and to process grievances.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent engaged in acts and conduct violative of Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom. As a remedy I shall recommend that the Respondent furnish the information requested in the Union's letter to the Respondent dated September 10, 1990.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

## ORDER

The Respondent, Sherry and O'Leary, Inc., Monroeville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to furnish information requested by the Union in its September 10, 1990 letter to the Respondent.

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<sup>2</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the information requested by the Union in its September 10, 1990 letter to the Respondent.

(b) Post at its facility in Monroeville, Pennsylvania, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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<sup>3</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."